IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2995 of 2004

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO.LTD.

Versus

MITABEN DHARMESHBHAI SHAH & ORS.

Appearance:

1. Special Civil Application No. 2995 of 2004

MR PV NANAVATI for the Petitioner

MR ZUBIN F BHARDA for Respondent No. 1

..... for Respondents Nos. 2-4

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 09/03/2004

ORAL JUDGEMENT

Heard the learned advocates.

RULE returnable today. Learned advocate Mr.Bharda waives service of rule.

The petitioner before this Court is the Insurance Company against whom a decree has been passed by the Motor Accidents Claims Tribunal, Valsad. In the ensuing execution proceeding being Civil Misc. (Execution) Application No.45/2003 the petitioner-Insurance Company raised objection that the petitioner was not liable to deposit the entire amount of outstanding dues since the Insurance Company has deducted a sum of Rs.69,538=00 as tax deducted at source under Section 194A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

The learned Judge, however, relied upon the judgment of the Bombay High Court in the matter of Islamic Investment Co. v/s. Union of India [(2002) 176 CTR (Bom) 46]. Following the said judgment the Tribunal held that the amount of interest awarded to the claimants became the judgment debt and lost its character as interest. The Insurance Company was duty bound to deposit the entire amount of judgment debt. The Tribunal, therefore, by impugned order, directed the petitioner - Insurance Company to deposit the entire outstanding dues under the award of the Tribunal. Feeling aggrieved, the Insurance Company has preferred the present petition.

Learned advocate Mr.Nanavati has relied upon Section 194A of the Act and has submitted that the Act specifically provides for deduction of tax at source from the amount of interest due and payable by the judgment-debtor on the amount of compensation awarded by the Motor Accidents Claims Tribunal.

Learned advocate Mr.Bharda has contested the petition and has relied upon the above referred judgment in the matter of Islamic Investment Co. and the judgment of the Hon'ble Supreme Court in the matter of All India Reporter Ltd. v/s. Ramchandra D.Datar [AIR 1961 SC 943].

In the said judgment the Hon'ble Supreme Court has observed that, "...when the claim is merged in the decree of the court, the claim assumes the character of a judgment debt, and to judgment-debts S.18 (of the Income-tax Act) has not been made applicable. The decree passed by the civil court must be executed subject to the deductions and adjustments permissible under the Code of

Civil Procedure...The rule that the decree must be executed according to its tenor may be modified by a statutory provision. But there is nothing in the Income-tax Act which supports the plea that in respect of the amount payable under a judgment-debt of the nature sought to be enforced, the debtor is entitled to deduct income-tax which may become due and payable by the judgment-creditor on the plea that the cause of action on which the decree was passed was the contract of employment and a part of the claim decreed represented amount due to the employee as salary or damages in lieu of salary."

Section 194A has been inserted in the Income-tax Act, 1961 by Finance (No.2) Act, 1967 with effect from 1st April, 1967. Sub section (1) thereof enjoins upon a person, not being an individual or a Hindu Undivided Family, who is responsible for paying to a resident any income by way of interest other than income to deduct income-tax thereon at the rates in force. Clause (ix) of sub section (3) of the said Section 194A reads as under :

"to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees."

Thus, the provisions of Section 194A of the Act have been specifically made applicable to the interest payable on the amount of compensation awarded by the Motor Accidents Claims Tribunal.

The said clause has been inserted with effect from 1st June, 2003 by the Finance Act, 2003. Admittedly, the amount of interest has been deposited by the petitioner Insurance Company on 2nd July, 2003 i.e. after 1st June, 2003. In view of the aforesaid specific provisions contained in the Income-tax Act, the Insurance Company was duty bound to deduct the amount of income-tax from the amount of interest payable by it. The Tribunal is, therefore, not right in relying upon the aforesaid judgment in the matter of Islamic Investment Co. (supra). As stated in re. All India Reporter Ltd. "the rule that the decree must be executed according to its tenor may be modified by a statutory provision." In view of the express provision as aforesaid, the decree passed against the petitioner - Insurance Company shall stand modified accordingly.

In view of the above discussion the petition is allowed. The impugned order dated 23rd February, 2004 passed by the Motor Accidents Claims Tribunal, Valsad in Civil Misc. (Execution) Application No.45/2003 is quashed and set aside.

Rule is made absolute. The parties shall bear their own costs.

(Ms. R.M.Doshit, J.)

/sakkaf